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Paper 1
DECLARED 8 August 2011

UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference No. 105,838 (RT)
(From Technology Center 1600)

PURDUE RESEARCH FOUNDATION,
Stephen F. Badylak, Robert S. Tullis,
Emily Cotran *ex rel.* Kristina Lindberg (deceased) and
Joanne Watson *ex rel.* Alan R. Spievack (deceased)
(10/228,927 and 12/053,383),
Junior Party,

v.

ACELL, INC.
(10/337,152; US 6,576,265 C1 and US 6,579,538 B1),
Senior Party.

DECLARATION

Bd.R. 203¹

By RICHARD TORCZON, *Administrative Patent Judge.*

¹ "Bd.R. x" may be used to abbreviate "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

A. DECLARATION OF INTERFERENCE

An interference is declared pursuant to 35 U.S.C. 135(a). Details of the application, patent, count, and claims designated as corresponding to the count appear under headings E and F.

B. DESIGNATION TO MANAGE

Administrative Patent Judge Richard Torczon has been designated to manage the interference. Bd.R. 104(a).

C. STANDING ORDER

A copy of the Standing Order (SO, Paper 2) accompanies this declaration. The Standing Order applies to this contested case.

D. CONFERENCE CALL TO SET DATES

A telephone conference call to set dates for action in this contested case is scheduled for **10 a.m. (Eastern) on 5 October 2011**. (The Board will initiate the call.)

No later than **3 October 2011**, each party shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd.R. 120; Bd.R. 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

A sample schedule for taking action during the motion phase appears as Form 2 in the Standing Order. The parties are encouraged to discuss the schedule prior to the conference call and to agree on dates for taking action. A typical motion period lasts approximately eight (8) months. A party requesting more or less time should be prepared to justify the request.

E. THE PARTIES TO THIS INTERFERENCE

Junior Party

Applications: 10/228,927, filed 27 August 2002
12/053,383, filed 21 March 2008

Title: Tissue regenerative composition

Inventors: Stephen F. Badylak of Pittsburgh, Pennsylvania, Robert S. Tullius of Brookston, Indianapolis, Nathan L. Huber of Fort Wright, Kentucky, Kristina Lindberg (deceased) and Alan R. Spievack (deceased)

Senior Party

Application: 10/337,152, filed 7 January 2003
Patents: US 6,576,265 C1, certificate issued 14 December 2010
US 6,579,538 B1, granted 17 June 2003
Title: Tissue regenerative composition, method of making,
and method of use thereof

Inventor: Alan R. Spievack of Cambridge, Massachusetts

F. COUNTS AND CLAIMS OF THE PARTIES

Count 1 (compositions and uses)

The method of '152 claim 30.

Count 2 (cardiac treatment)

The method of '538 claim 1.

Count 3 (method of making)

The method of '152 claim 30.

The claims of the parties are:

Purdue: '927—57-111
'383—1-27

ACell: '152—30, 32-35, 37-39 and 41-43
'265—1-19
'538—1-28

The claims corresponding to Count 1:

Purdue: '927—85, 86, 92-98 and 100-111
'383—1-10, 16-22 and 24-27
ACell: '152—all
'265—1, 2, 8-14 and 16-19
'538—none

The claims corresponding to Count 2:

Purdue: '927—57- 86, 92-98 and 100-111
'383—1-10, 16-22 and 24-27
ACell: '152—all
'265—1, 2, 8-14 and 16-19
'538—all

The claims corresponding to Count 3:

Purdue: '927—87- 91 and 99
'383—11-15 and 23
ACell: '152—none
'265—3-7 and 15
'538—none

The benefit accorded for all counts:

Purdue: 12/053,383, filed 21 March 2008;
11/838,834, filed 14 August 2007; and
10/228,927, filed 27 August 2002.

ACell: 10/337,152, filed 7 January 2003;
09/691,590, filed 18 October 2000 (count 3 only);
09/691,345, file 18 October 2000 (not count 3);² and
60/171,733, filed 22 December 1999.

² The parties may also order the reexamination, 90/008,642.

G. HEADING TO BE USED ON PAPERS;
EXHIBIT NUMBERS

Addendum 1 provides the heading that shall be used on all papers filed in the contested case. See SO ¶ 106.1.1.

The ranges of exhibit numbers are assigned as follows
(Bd.R. 154(c)(1); SO ¶ 154.2.1):

ACell: 1001-1999.

Purdue: 2001-2999.

H. ORDER FORM FOR REQUESTING FILE COPIES

When requesting copies of files, use of Addendum 2 (SO Form 4) will greatly expedite processing of the request. Please attach a copy of Parts E and F of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.

Attachment: None.³

Enclosure: Copy of Standing Order (Paper 2)

cc:

Rebecca Ball, Barnes & Thornburg LLP, of Indianapolis, Indiana.

Ronda P. Moore, Burns & Levinson, LLP, of Boston, Massachusetts.

³ For a United States patent or published application listed in this paper, see <http://patft.uspto.gov/>; see also <http://portal.uspto.gov/external/portal/pair> for prosecution histories available to the public.

ADDENDUM 1: PAPER HEADING

Filed on behalf of: [Name of Party] Paper No. [Leave blank]

By: [Name of lead counsel
Name of backup counsel
Street address
City, State, and ZIP Code
Tel:
Fax:

]

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[TITLE OF PAPER]

ADDENDUM 2: FILE COPY REQUEST
Patent Interference No. 105,838

Attach a copy of sections E and F of this declaration to this request.
On the copy, circle each patent and application that you are requesting.
Include the information indicated below to facilitate processing of this request.

Charge fees to:

1. USPTO Deposit Account No. _____
2. Complete delivery address, including street, city, state, ZIP code:

3. Telephone, including area code: _____

